

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Application by Qwest Communications	)	WC Docket No. 02-314
International, Inc., for Authorization to	)	
Provide In-Region, InterLATA Services	)	
In Colorado, Idaho, Iowa, Montana,	)	
Nebraska, North Dakota, Utah,	)	
Washington & Wyoming	)	

**REPLY COMMENTS OF PAGEDATA**

PageData believes that the application of Qwest to provide interLATA long distance telephone service in Idaho and the other eight states should be denied. Qwest's application is premature because Qwest has not followed Federal Communication Commission ("FCC" or "Commission") rules. Qwest's failure to come in to compliance with Commission Rules Sections 1.17 and 1.65 makes their application "dead on arrival." Even before Qwest gets into the jurisdiction of Commission Rules Sections 1.17 and 1.65, Qwest has to be in compliance with 47 CFR Sections 251 and 252 and the checklist. Qwest is not in compliance with 47 CFR Sections 251 and 252 and the markets are not open. Granting the application now would harm Idaho consumers and the prospect of competition in the state.

Interconnection agreements, the bedrock of the 1996 Telecommunications Act, are under severe attack, the industry is in limbo and the FCC needs to firmly establish the role that interconnection agreements will play in the future. The FCC should answer with certainty if an ILEC such as Qwest can cancel or terminate an interconnection agreement

that it has not filed as a means to prevent other carriers from picking and choosing the favorable provisions. If a carrier such as Qwest cannot cancel an interconnection agreement that has not been filed, then Qwest is not in compliance and their application has to be denied.

In its letter to the FCC, Qwest stated:

“Tomorrow Qwest will file in the remaining four states all such agreements that include provisions creating on-going obligations that relate to Section 251(b) or (c) which have not been terminated or superseded by agreement, commission order, or otherwise. Qwest will ask the respective commissions in these states to approve the agreements such that, to the extent any active provisions of such agreements relate to Section 251 (b) or (c), they are formally available to other CLECs under Section 252(i).”<sup>1</sup>

Qwest has admitted that it did not file all secret interconnection agreements because Qwest did not file interconnection agreements that it considered “terminated or superseded by agreement, commission order, or otherwise.” This admission makes one wonder how many more interconnection agreements have not been filed that do not fall within Qwest’s narrow definition of an interconnection agreement, in violation of the FCC’s October 4, 2002 Order<sup>2</sup>.

Qwest’s position is that a majority of the secret unfiled interconnection agreements have expired. If the agreement has not “expired” it is Qwest’s policy to terminate many of the agreements with the more favorable terms before the documents have to be filed with state commissions so other carriers cannot pick and choose the same provisions. In order for Qwest to have a secret agreement superseded or terminated, Qwest enticed the carrier, a party to the agreement, to enter into another secret

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<sup>1</sup> DA-02-2065, Qwest ex parte letter dated August 20, 2002 to Ms. Marlene Dortch, Secretary to the Federal Communications Commissions, page 2

interconnection agreement. Qwest believes that this unlawful act insulates them from allowing carriers not a party to the agreements the chance to pick and choose favorable provisions out of these interconnection agreements. This act of discrimination disqualifies Qwest's application to provide interLATA long distance service.

On October 11, 2002, Qwest submitted an ex parte letter to the FCC under this docket updating the status of the unfilled interconnection agreements in the various states. In its update Qwest failed to inform the Commission that it did not file all relevant interconnection agreements in each state. Qwest is still using its policy of not filing all interconnection agreements. If the Commission cross-references the agreements that have been filed in various states it is easy to see that many agreements have not been filed in all applicable states.

The Commission should act quickly and soundly to discourage actions of this kind in the future. What rights does the discriminated carrier have to pick and choose the provisions out of an interconnection agreement that has not been filed with state commissions? The Commission needs to soundly address this corrupt policy to give stability to the marketplace.

Iowa understood Qwest's attempts to circumvent the filing process and said:

In its initial brief, Qwest argues that the Board should not adopt an "overbroad application" of § 252 because it would "implicate the validity of any non-filed ILEC-CLEC agreements." (Initial Brief at page 14.) Qwest reasons that if the non-filed agreements, were required to be filed they would be valid only after approval by the Board. As a result, any contract provisions that should have been filed but were not "were never actually valid."<sup>3</sup>

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<sup>2</sup> FCC Memorandum Opinion and Order No. 02-276 dated October 4, 2002

<sup>3</sup> Iowa Utility Board "Order Making Tentative Findings, Giving Notice For Purposes Of Civil Penalties, And Granting Opportunity To Request Hearing" May 29, 2002, Docket FCU-02-2, page 18

Qwest's argument relies upon its past failure to comply with the statute and the rules as a justification for continued noncompliance. The possible consequences of non-filing are something that Qwest (and the other parties to the agreements) should have considered when it decided not to file these agreements; those possible consequences do not amount to a reason to adopt an overly narrow interpretation of the filing requirement for all future agreements.<sup>4</sup>

It has been shown by many states that Qwest has not filed all interconnection agreements. The states do not look at this infraction as seriously as Qwest's competitors. The states are looking at it from their state view and not from the entire Qwest territory. Small carriers are affected the most and devastated by this practice of not being able to take advantage of the provisions in these agreements. The large carriers already received their desired provisions. The states answers to Qwest's infractions were fines. Qwest may view this as a cost of doing business in order to receive authority to get into the lucrative long distance market. The fines do not help small carriers adopt the favorable provisions they were denied. Now the small carriers have to fight Qwest on a state-to-state basis to prove that an interconnection agreement was unlawfully terminated.

The Commission is faced with the same decision on a national level that Iowa had to make on a state level and the Commission's actions against Qwest's unlawful policies should be as decisive to not let Qwest debilitate the ability of smaller carriers to adopt the provisions of favorable interconnection agreements.

PageData and other carriers have been victims of Qwest's interconnection agreement policies. As envisioned by Congress, the Supreme Court and the Commission, PageData and other Idaho small carriers (without the bargaining power of large multi-state carriers) sought to take advantage of the wealth of the many provisions in the

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<sup>4</sup> Iowa Utility Board, page 18

unfiled interconnection agreements to settle our disputes with Qwest as the large multi-state carriers did. Qwest now claims these interconnection agreements have been terminated and the wealth of favorable provisions that would settle many carriers' disputes with Qwest are unlawfully unavailable. The Commission needs to address this and not skirt around the issue.

Qwest provided a single point of presence in the LATA under the Western Wireless and US WEST New Vector interconnection agreements since 1997<sup>5</sup> but has denied the paging industry a single point of presence in the LATA. There are no interconnection agreements on file in Idaho, and we believe in all other 13 Qwest states, for paging companies that includes a provision for a single point of presence. Qwest's discrimination against the paging industry by not allowing interconnection at any technically feasible point and restricting the type of service that is offered over a network element<sup>6</sup> is reason to deny Qwest's 271 application.

### **CONCLUSION**

At this time the market in Idaho is not where it should be to allow Qwest's entry into the lucrative long distance market. Premature entry would send the wrong signal to Qwest that the Commission has turned a head or winked an eye to the documented gross misconduct that Qwest has done. It would also restrict the prospect of local competition. Qwest's territories, including Idaho, have been besieged by corruption and Qwest failing in its primary fiduciary responsibility to open its market to competition and to provide nondiscriminatory access to its network. The Section 271 criteria is impossible to comply with without the complete filing of all outstanding interconnection agreements in every

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<sup>5</sup> Western Wireless Contract No. USW-T-96-11 and WST-T-96-1, approved by IPUC January 17, 1997 and US WEST New Vector Contract No. USW-T-97-15 approved by the IPUC August 28, 1997

state to be available for pick and choose as envisioned by Congress, the Supreme Court and the Commission. For the viability of the smaller carriers, PageData demands that the Commission answer the following questions: 1) Can an ILEC terminate or cancel an unfiled interconnection agreement to avoid filing of the agreement and its availability for pick and choose by other carriers? 2) What are the rights of the discriminated carrier and what is their immediate relief because a formal complaint before the Commission is too costly for smaller carriers?

Respectfully Submitted,

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October 25, 2002

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<sup>6</sup> Section 51.307(c)